

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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HOWARD HESS DENTAL LABORATORIES	:	
INCORPORATED and PHILIP GUTTIEREZ d/b/a	:	
DENTURES PLUS, on behalf of themselves and all others	:	
similarly situated,	:	
	:	
Plaintiffs,	:	C.A. No. 99-255 (SLR)
	:	
-against-	:	
	:	
DENTSPLY INTERNATIONAL, INC.,	:	
	:	
Defendant.	:	
-----	X	

**PLAINTIFFS' OPPOSITION TO DENTSPLY'S MOTION TO DISMISS
WITH PREJUDICE, AND IN SUPPORT OF PLAINTIFFS' FORM OF ORDER**

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January 31, 2008

Pursuant to Local Rule 7.1.2(a), Plaintiffs, Howard Hess Dental Laboratories, Inc., and Philip Guttierrez d/b/a Dentures Plus, file this opposition to Dentsply International, Inc.'s motion, filed without any supporting brief, in which Dentsply moves to dismiss the Complaint with prejudice (D.I. 287).

The background for Plaintiffs' opposition is the Court's Order, dated January 8, 2008 (D.I. 286 at 2), which directed that "[o]n or before January 31, 2008, the parties shall submit either a stipulation or competing orders in *Hess* and *Jersey Dental* in order to accommodate a consolidated appeal."

First, the Court's Order did not direct the parties to make motions.

Second, the Court's Order instructed the parties to submit proposed orders, for the purpose of closing the case in a fashion that will "accommodate" an "appeal" (D.I. 286 at 2). Contrary to the Court's purpose, if Plaintiffs were to consent to Dentsply's motion, Dentsply might subsequently argue that Plaintiffs should not be allowed to appeal from any order resulting from such a "consented to" motion. Because of this concern, among others, Plaintiffs cannot consent to Dentsply's motion. Plaintiffs reserve and retain their right to appeal from any order that dismisses the Complaint with prejudice, and from all prior adverse orders not previously appealed from by Plaintiffs.

Notwithstanding Plaintiffs' opposition to Dentsply's motion, Plaintiffs are submitting herewith the form of an order that will dismiss the Complaint with prejudice, in a manner that will, as ordered by the Court, "accommodate" an "appeal" (D.I. 286 at 2). Plaintiffs believe that our proposed form of order is more clear and instructive than Dentsply's, regarding both the context in which the order is being issued, and the Court's purpose in issuing the order.

For the foregoing reasons, Plaintiffs respectfully request that Dentsply's motion be denied and that the form of order issued by the Court be the form filed herewith by Plaintiffs.

Dated: January 31, 2008

Respectfully Submitted,

CHIMICLES & TIKELLIS LLP

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